



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-SC-20-0029; SC20-985-2 FR]

**Marketing Order Regulating the Handling of Spearmint Oil
Produced in the Far West; Increased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to increase the assessment rate established for the 2020-2021 and subsequent marketing years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joshua Wilde, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2055, Fax: (503) 326-7440, or Email: Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of spearmint oil producers operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB)

exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the Order are obtained from such assessments. The assessment rate will be applicable to all assessable spearmint oil for the 2020-2021 marketing year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and

request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from \$0.10 per pound, the rate that was established for the 2019-2020 marketing year, to \$0.14 per pound of Far West spearmint oil handled for the 2020-2021 and subsequent marketing years.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting.

Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2019-2020 and subsequent marketing years, the Committee recommended, and USDA approved, an assessment rate of \$0.10 per pound of Far West spearmint oil handled. That assessment rate would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 26, 2020, and unanimously recommended expenditures of \$214,825 and an assessment rate of \$0.14 per pound of Far West spearmint oil handled for the 2020-2021 and subsequent marketing years. In comparison, the previous year's budgeted expenditures were \$272,850. The assessment rate of \$0.14 is \$0.04 higher than the \$0.10 rate currently in effect. The Committee recommended the assessment rate increase because expenditures have exceeded assessment revenue in the previous six marketing years and financial reserves have been reduced to approximately \$87,468. The Committee believes that drawing from reserves to fund operations is

not a sustainable strategy and that the previous assessment increase from \$0.09 to \$0.10 per pound of spearmint oil handled, effective for the 2019-2020 and subsequent marketing years, was not sufficient to offset declining sales volume and increasing costs. The Committee projects expenses to exceed income by \$63,525 if the assessment rate is left unchanged for the 2020-2021 marketing year. The Committee believes that the \$0.14 per pound assessment rate will allow the Committee to adequately balance budgeted expenses with projected income for the 2020-2021 and subsequent marketing years.

The major expenditures recommended by the Committee for the 2020-2021 marketing year include \$169,000 for contracted administration by Ag Association Management, Inc., \$26,025 for administrative expenses, \$8,800 for Committee expenses, \$6,500 for software/website maintenance, and \$4,500 for market research and development projects. In comparison, major expenses for the 2019-2020 marketing year included \$169,000 for contracted administration, \$30,850 for administrative expenses, \$15,000 for Committee expenses, \$6,500 for software/website

maintenance, and \$13,000 for market research and development projects.

The Committee derived the recommended assessment rate by considering anticipated expenses, expected spearmint oil sales, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at \$210,000 (1,500,000 pounds of spearmint oil x \$0.14 per pound assessment rate), along with \$1,300 in other income and \$3,525 from reserve funds, will be sufficient to cover budgeted expenses of \$214,825. Funds in the reserve (estimated to be \$87,468 at the beginning of the 2020-2021 marketing year) will be kept within the maximum permitted by § 985.42(a) of the Order and will not exceed approximately one marketing year's operational expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a

budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2020-2021 marketing year budget, and those for subsequent marketing years, will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued

pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 41 producers and 94 producers of Scotch and Native spearmint oil, respectively, in the regulated area and approximately 8 spearmint oil handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil range from \$14.00 to \$17.50 per pound. The National Agricultural Statistics Service (NASS) reported that the 2018 U.S. season average spearmint oil producer price per pound was \$16.80. Multiplying \$16.80 per pound by 2018-2019 marketing year spearmint oil utilization of 1,963,028 million pounds yields a crop value estimate of about \$33.0 million. Total 2018-2019 marketing year spearmint oil utilization, reported by the Committee, was 717,952 pounds and 1,245,076 pounds for Scotch and Native

spearmint oil, respectively.

Given the reporting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the \$16.80 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 38 of the 41 Scotch spearmint oil producers and 89 of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Multiplying 1.20 by the 2018 producer price of \$16.80 yields a handler free on board (FOB) price estimate of \$20.16 per pound.

Multiplying this estimated handler FOB price by spearmint oil utilization of 1,963,028 pounds results in an estimated handler-level spearmint oil value of \$39.6 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about \$5.0 million, which is well below the SBA threshold

for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the eight handlers had a 2018-2019 marketing year spearmint oil sales value that exceeded the \$30 million SBA threshold.

Therefore, many of the Far West spearmint oil producers may be classified as small entities and all of the Far West spearmint oil handlers may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2020-2021 and subsequent marketing years from \$0.10 to \$0.14 per pound of spearmint oil handled. The Committee unanimously recommended 2020-2021 expenditures of \$214,825 and an assessment rate of \$0.14 per pound of spearmint oil. The \$0.14 per pound assessment rate is \$0.04 higher than the rate previously in effect.

The Committee estimates that the industry will handle 1,500,000 pounds of spearmint oil during the 2020-2021 marketing year. Thus, the \$0.14 per pound rate should

provide \$210,000 in assessment income. The Committee anticipates that income derived from handler assessments, along with \$1,300 of other income and \$3,525 from its reserve fund, will fully fund all budgeted expenses for the 2020-2021 marketing year. Furthermore, the Committee expects that assessment revenue will completely cover budgeted expenses for the 2021-2022 and subsequent marketing years.

The major expenditures recommended by the Committee for the 2020-2021 marketing year include \$169,000 for contracted administration by Ag Association Management, Inc., \$26,025 for administrative expenses, \$8,800 for Committee expenses, \$6,500 for software/website maintenance, and \$4,500 for market research and development projects. Budgeted expenses for these items in the 2019-2020 marketing year were \$169,000, \$30,850, \$15,000, \$6,500, and \$13,000, respectively.

The Committee recommended the assessment rate increase because expenditures have exceeded assessment revenue in the previous six marketing years and financial reserves have been reduced to approximately \$87,468. The Committee believes that drawing from reserves to fund operations is

not a sustainable strategy and that the previous assessment increase from \$0.09 to \$0.10 per pound of Far West spearmint oil handled was not sufficient to offset declining sales volume. The Committee projected expenses to exceed income by \$63,525 if the assessment rate was left unchanged for the 2020-2021 marketing year. Increasing the continuing assessment rate will allow the Committee to adequately balance budgeted expenses with projected income for the 2020-2021 and subsequent marketing years.

Prior to arriving at this budget and assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.10 per pound and increasing the assessment rate to a different amount. However, leaving the assessment rate unchanged would have required the Committee to deplete its financial reserve to a fiscally unsustainable level. Based on estimated shipments, the established assessment rate of \$0.14 per pound of spearmint oil should provide \$210,000 in assessment income. The Committee determined assessment revenue will be adequate to cover most of the budgeted expenditures for the 2020-2021 marketing year and all of the Committee's budgeted expenditures for subsequent

marketing years. Any excess funds will be used to replenish the Committee's monetary reserve in the future. Reserve funds will be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the average producer price for the 2020-2021 season is expected to be approximately \$15.90-17.40 per pound of spearmint oil. Therefore, estimated assessment revenue for the 2020-2021 marketing year as a percentage of total producer revenue will be between 0.80 and 0.88 percent (\$0.14 divided by \$17.40 and \$15.90, respectively).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Far West spearmint oil industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 26, 2020, meeting was

a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this action. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2020 (85 FR 23243). Copies of the proposed rule were provided to all Far West spearmint oil handlers. The proposal was also made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 27, 2020, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985 - MARKETING ORDER REGULATING THE HANDLING OF
SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 985.141 to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2020, an assessment rate of \$0.14 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Bruce Summers,
Administrator,
Agricultural Marketing Service.

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